

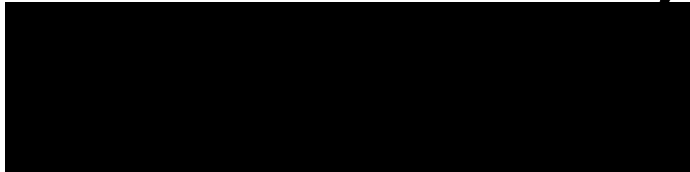
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U.S. Citizenship
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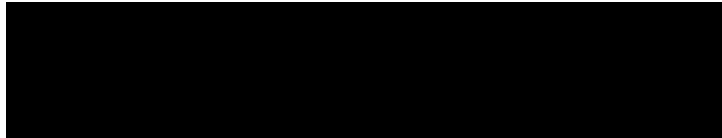


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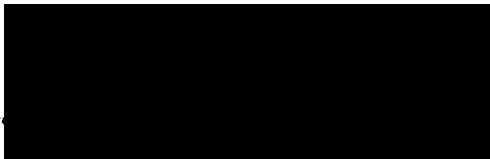
FILE: WAC 01 209 60268 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



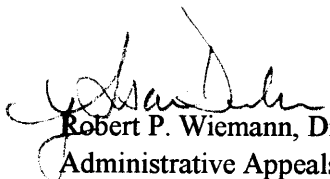
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a nursing registry that seeks to employ the beneficiary as an associate administrator. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and previously submitted evidence.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an associate administrator. Evidence of the beneficiary's duties includes: the Form I-129; the letter accompanying the Form I-129; and the petitioner's

response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: developing an effective communication/information system between the client, nurses, and the petitioner's personnel department to monitor daily and weekly staffing needs of clients; monitoring the billing department to assure timely receipt of payments and resolving discrepancies in billing; reviewing the performance of nurses; addressing client and patient complaints; compiling, analyzing, and reporting findings to management; and initiating contract renewal with clients and nurses. Essentially, the beneficiary will handle the daily operations of the registry. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration or nursing and related experience.

The director found that the proffered position was not a specialty occupation. The director stated that the request for evidence had advised the petitioner that the proffered position resembles a nursing home administrator. According to the director, in response to the request for evidence, the petitioner modified the position's duties and reported that the petitioning entity was a nursing registry, not a nursing home. Upon reviewing the proffered position's duties, the director concluded that some responsibilities encompass overseeing an office and business which are managerial duties. According to the director, the 2000-2001 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) makes no finding that a baccalaureate degree or higher is a common industry requirement for managers or supervisors. Furthermore, the director noted that positions with managerial or executive duties are not generally considered specialty occupations unless the duties include supervising persons who are employed in specialty occupations or the duties are of a scope and complexity exceeding those normally encountered in the particular occupation. The *Handbook*, the director stated, reports that while many persons in managerial positions hold baccalaureate degrees, there is no requirement of a degree in a specific and specialized area. Degrees in business and in various liberal arts fields appear equally welcome. Consequently, the director found that the petitioner failed to establish one of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proffered position is a specialty occupation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

Counsel states that the proffered position belongs to the specialty occupation classification of health services manager; consequently, the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). According to counsel, the director's request for evidence mentioned that the proffered position resembles a nursing home administrator. Counsel states that the petitioner's response to the request for evidence had explained that it was not a nursing home and, therefore, the director's request for certain evidence regarding the beneficiary was inappropriate. Counsel maintains that the petitioner's organization, a nursing registry, is not an ordinary office or business, and that the director erroneously concluded that the position's responsibilities

encompass the managerial duties of overseeing an office and business. According to counsel, the request for evidence stated that the proposed position belongs to the classification of health services manager; counsel asserts that the director's denial letter contradicts this previously made statement. Furthermore, counsel claims that the petitioner never modified the position's duties. Last, counsel claims that the assistant administrator will supervise a position, health services directors/coordinator, that requires at least a bachelor's degree in nursing, physical therapy, or a healthcare related field.

Counsel's claims are empty. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A review of the *Handbook* discloses that the duties of the proffered position do not resemble those of a health services manager. According to the *Handbook*, the term "health services manager" covers all individuals who plan, direct, coordinate, and supervise the delivery of healthcare. Medical and health services managers include specialists who are responsible for a specific clinical department and generalists who manage or help to manage an entire facility or system. Medical and health services managers are found in hospitals; nursing and personal care facilities; offices and clinics of physicians; home health agencies; ambulatory facilities run by state and local governments; offices of dentists and other health practitioners; medical and dental laboratories; residential care facilities; and other social service agencies. The evidence in the record depicts that the proffered position differs substantially from that of a health services manager. In the first place, none of proffered position's duties involve responsibility for a clinical department or helping to manage an entire facility or system that directly delivers healthcare. Second, as explicitly described in the *Handbook*, health services managers are not found in an organization like the petitioning entity.

The *Handbook* reveals that the duties of the proffered position resemble those of operations and general managers. Operations and general managers plan, direct, or coordinate the operations of companies or organizations. According to the *Handbook*, the formal education and experience of top executives varies as widely as the nature of their responsibilities. Many of the positions are filled by promoting experienced, lower level managers when an opening occurs. In industries such as retail trade or transportation, for instance, the *Handbook* reports that individuals without a college degree may work their way up within the company and become managers. The petitioner states that the proffered position requires the theoretical and practical knowledge of complex medical terms, procedures, and hospital policies. An operations and general manager may attain such knowledge by completing an associate's degree in nursing. Again, operations and general managers do not require a bachelor's degree in a specific specialty. Consequently, the *Handbook* conveys that a bachelor's degree would not be the minimum entry requirement for the proffered position.

Counsel's claim that the assistant administrator will supervise a health services directors/coordinator, a position requiring a bachelor's degree in nursing, physical therapy, or other health care related fields, does not elevate the proposed position to a specialty occupation. As already discussed, the AAO examines the duties of a position, along with any supporting evidence, to determine whether it requires a bachelor's degree to enter into the occupation. Moreover, the petitioner has never stated that the beneficiary will supervise this position. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Consequently, the AAO will disregard counsel's assertions regarding this particular statement.

Next, counsel asserts that CIS has already determined that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (3) since CIS has approved other, similar petitions in the past. Counsel submits an approval notice from Nationwide Medical Service, a nursing registry, and approval notices from the petitioner, all unrelated to this proceeding. This record of proceeding, however, does not contain all of the supporting evidence submitted to the California Service Center in the prior cases. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the proffered position is parallel to the other positions. Moreover, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The letter from Nationwide Medical Service declares that it is a nursing registry, and that it is normal in the industry to require a bachelor's degree for the proffered position. This letter, in itself, is insufficient to establish an industry-wide requirement. In addition, Nationwide Medical Service offers no independent evidence to corroborate its declaration. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Consequently, the approval notices and the letter from Nationwide Medical Service do not confirm an industry-wide requirement of a bachelor's degree for the proffered position.

Counsel maintains that the petitioner satisfies the third criterion at 8 C.F.R. 214.2(h)(4)(iii)(A), and submits a list of four of the petitioner's former or present employees. The AAO finds counsel's statement and submitted evidence unpersuasive. The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. As previously discussed, the AAO determined that the duties of the proffered position correspond to those of operations and general managers - positions that do not require a bachelor's degree in a specific specialty. Thus, the petitioner fails to establish the third criterion at 8 C.F.R. 214.2(h)(4)(iii)(A).

There is no evidence that would show that the position is unique and can be performed only by a person possessing a bachelor's degree.

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

Counsel avers that the fourth criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) - that the nature of the specific duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree - is satisfied because a person holding less than a bachelor's degree will not be able to adequately perform the duties of the position as it entails review and analysis of hospital manuals, health services agreements, and staffing contracts. Counsel claims that the duties of the position require a person possessing theoretical and practical knowledge of complex medical terms, procedures, and hospital policies.

Counsel's statements are baseless. On appeal counsel claims that the beneficiary will analyze hospital manuals and health services agreements; however, the petitioner's initial job description doesn't mention these duties. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the AAO shall disregard these specific claims of counsel. Furthermore, the *Handbook* reveals that operations and general managers perform the duties of the proffered position; neither of these occupations requires a bachelor's degree in a specific specialty. The fourth criterion, therefore, is not established.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.